


FILED
Superior Court of California
County of San Francisco

JUN 19 2014

CLERK OF THE COURT

BY:  Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 501

McCormack Baron Ragan Management Services, Inc.)	Case CUD—14-648663
)	
Plaintiff,)	ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
)	
v.)	Date: June 18, 2014
)	Time: 9:30 a.m.
Margarita Herrera, et al.,)	Department: 501
)	
Defendants.)	

Defendant's Motion for Summary Judgment came on regularly for hearing on June 18, 2014 at 9:30 a.m. in Department 501 of the San Francisco Superior Court. Jonathan Bornstein appeared for Plaintiff; Irina Naduhovskaya and Alexander Quest, a certified law student, appeared for Defendant; the Honorable Ronald Evans Quidachay presiding.

Upon consideration of the oral and written argument, the Court took this matter under submission. The Court now rules as follows:

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//

1 1. Plaintiff's objections outlined in the response to Defendant's Separate Statement are
2 OVERRULED, specifically:

- 3 a. All objections that "the Complaint, '14-Day Notice to Quit," and the 'Residential
4 Lease' are not part of defendant's motion" as Defendant's motion is based on the
5 "notice, the attached Memorandum of Points and Authorities, Separate Statement of
6 Undisputed Facts, Declaration of Defendant and exhibits filed with this motion, and
7 *all papers and records in this action...*" (Defendant's Notice of Motion for Summary
8 Judgment 2:4-6). "A defendant moving for summary judgment may rely on the
9 allegations contained in the plaintiff's complaint, which constitute judicial
10 admissions. As such they are conclusive concessions of the truth of a matter and have
11 the effect of removing it from the issues." Castillo v. Barrera (2007) 146 Cal.App.4th
12 1317, 1324. Therefore, Defendant properly relied on the Complaint and exhibits
13 thereto for evidentiary support.
14
15 b. Objections to Undisputed Facts 18, 19, 20, 21, and 22. These facts are supported by
16 Defendant's declaration and are based on Defendant's personal knowledge regarding
17 (1) request for an informal grievance hearing; (2) grievance hearing; and (3)
18 receipt/non-receipt of the grievance hearing decision.
19

20 2. Defendants have shifted their burden:

- 21 a. "There is no cause of action [for unlawful detainer] until after the tenancy has been
22 terminated. Highland Plastics, Inc. v. Enders (1980) 109 Cal.App.3d Supp. 1, 7.
23
24 b. Lease between the parties contains a provision titled "Grievance Hearing," which
25 provides in relevant part "[w]hen the Lessor is required to afford the Lessee the
26 opportunity for a hearing under the Lessor's Grievance procedure for a grievance
27
28

1 concerning the Lease termination, the tenancy shall not terminate (even if any notice
2 to vacate under the State or local law has expired) until the time for the Lessee to
3 request a grievance hearing has expired, and (if a hearing was timely requested by the
4 Lessee) the grievance process has been completed.” Ex. 1 to Complaint, p. 5,
5 paragraph 22(B)(3).
6

7 c. “14 Day Notice to Quit” is attached to the verified Complaint and Complaint alleges
8 that “[all facts stated in the notice are true.” (Complaint, paragraph 7(c)). Plaintiff is
9 bound by its judicial admission in the “14 Day Notice to Quit” that “[Defendant has]
10 the right to a grievance and appeal procedure for the resolution of disputes arising out
11 of [Defendant’s] tenancy. ... [Defendant] has ten (10) days within which to request an
12 informal hearing. If [Defendant] is dissatisfied with the informal hearing decision,
13 [Defendant] may request a formal hearing within ten (10) days after the informal
14 hearing decision is issued.”
15

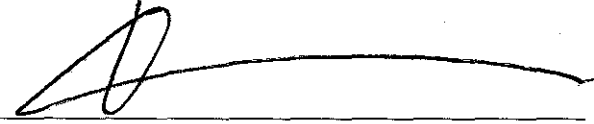
16 d. “14 Day Notice to Quit” was served on April 14, 2014 (Complaint, paragraph
17 8(a)(3)); Defendant requested an informal grievance hearing on April 27, 2014
18 (Defendant’s Declaration, paragraph 9); The informal grievance hearing took place on
19 May 5, 2014 (Defendant’s Declaration, paragraph 10); Defendant did not receive a
20 decision of the informal grievance hearing (Defendant’s Declaration, paragraph 11);
21 Complaint was filed on May 7, 2014 (“A Request for Judicial Notice is not necessary
22 for the purpose of bringing the Court’s attention to the fact that documents, including
23 orders, have been filed in the same case.” San Francisco Superior Court Uniform
24 Local Rules of Court 8.6(D)), i.e. within 2 days of the informal grievance hearing and
25 before the grievance process as described in the Notice “has been completed.”
26
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1 3. Plaintiff submitted no evidence in support of its opposition to Defendant's Motion for
2 Summary Judgment.

3 Therefore, Defendant's Motion for Summary Judgment is GRANTED.

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5 **IT IS SO ORDERED.**

6 DATED: June 19, 2014

7 
8 Ronald Evans Quidachay
9 Judge of the San Francisco Superior Court

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RONALD E. QUIDACHAY

SUPERIOR COURT OF CALIFORNIA
County of San Francisco
Department 501

Case Number: CUD-14-648663

McCormack Baron Ragan Management
Services, Inc.,

Plaintiff(s)

Vs.

Margarita Herrera, et al.,

Defendant(s),

CERTIFICATE OF MAILING
(CCP 1013a (4))

I, Jose Rios Merida, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On June 19, 2014, I served the attached ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, by placing a copy thereof in a sealed envelope, addressed as follows:

Kathryn Quetel, Esq.
BORNSTEIN AND BORNSTEIN, LLP
507 Polk Street, Suite 410
San Francisco, CA 94102

Margarita Herrera
669 Linden Street
San Francisco, CA 94102

I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: June 19, 2014

T. MICHAEL YUEN, Clerk

By: 

Jose Rios Merida, Deputy Clerk